

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7145

Petition of Brian Grissler vs Town of Stowe Electric)
Department re: dispute concerning demand rate)
designation and charges relating thereto)

Order entered: 11/21/2006

I. INTRODUCTION

On January 17, 2006, Mr. Brian Grissler filed a petition with the Public Service Board ("Board") requesting relief from a determination made by the Town of Stowe Electric Department ("Stowe") that his electric service account be placed on Stowe's Residential Demand Rate 06.

On January 30, 2006, a scheduling conference, via telephone, was held. Mr. Grissler and Stowe participated in this conference.

On February 10, 2006, Stowe filed a response to Mr. Grissler's petition.

The parties have agreed that this docket should proceed solely on the basis of written submissions.¹ The following items have been filed with the Board:

(1) The Petition of Brian G. Grissler, filed with the Board on January 17, 2006, with the following attachments:

(a) A copy of a letter to Brian & Patty Grissler from Stowe dated
December 30, 2005.

(b) Copies of six separate Electric Service bills from Stowe for
"Owls Head Ln Lot 9" with due dates of 9/12/05, 10/12/05, 10/27/05,
11/28/05, 12/28/05, and 1/ 27/06.

(2) Letter of Ellen L. Burt, dated February 8, 2006, and filed with the Board on February 10, 2006 ("Response to petition"), with the following attachments:

1. Letter of Brian G. Grissler, dated May 15, 2006; Letter of Brooke Gadapee, dated May 19, 2006.

(a) A copy of a one-page letter from Stowe to Brian & Patty Grissler, dated April 4, 2005.

(b) A copy of a one-page document entitled "Service Application" signed by "Gould Corp." and dated 3/29/05.

(c) A copy of "Stowe Electric Department Residential Demand Rate 06" (3 pages).

(d) "Exhibit A-1" and "Exhibit A-2" (a copy of the Declaration of Covenants, Conditions, and Restrictions of Owl's Head Subdivision Phase II Stowe, Vermont") (2 pages).

(e) "Exhibit B" (a copy of the first page of a Warranty Deed from John Blandon and Dianne H. Blandon to Brian G. Grissler and Patricia A. Grissler for Lot #9 of the Owl's Head Subdivision).

(f) A copy of the notes portion of a survey map.

(3) Copies of Stowe electric service bills for the electric usage at Owl's Head Ln Lot 9 for the period January through May 2006.

(4) A letter from Paul Reed, President of Sundown Corporation, to Susan Hudson, dated January 31, 2006.

No party has objected to any of these items being admitted as evidence in this proceeding. Accordingly, I hereby admit each of these items as evidence in this docket.²

Pursuant to 30 V.S.A. § 8, and based on the record and evidence before me, I present the following findings to the Board.

II. FINDINGS

1. Brian Grissler is the owner of property located at 252 Owl's Head Lane, in Stowe, Vermont. Electric service to that property is provided by Stowe, and identified on Stowe's

2. See Memorandum from Judith M. Kasper dated May 10, 2006, and Memorandum from Judith M. Kasper, dated May 23, 2006.

electric bills for service to that property as "Owls Head Ln Lot 9" ("Owls Head"). Petition at 1; Petition attachment 2.

2. Construction of a home for Mr. Grissler at the Owls Head location began in May 2005, with a target completion date of March 1, 2006. Petition at 1.

3. Prior to the billing period beginning on November 15, 2005, Mr. Grissler was charged by Stowe for electric service under Stowe's Residential Rate 01 ("Rate 01"). Petition attachment 1.

4. By letter dated December 30, 2005, Stowe notified Mr. Grissler that his electric usage for the billing period of December 2005 had exceeded 2,000 kWh, and that, if his electric usage also were to exceed 2,000 kWh for the January 2006 billing period, his account thereafter would be billed under Stowe's Residential Demand Rate 06 ("Rate 06"), which requires payment of a demand charge along with a kWh charge.³ Petition attachment 1.

5. Customers billed under Stowe's Rate 06 pay a higher rate per kWh for all kWhs over 150 per month, and a higher monthly customer charge than customers billed under Stowe's Rate 01. Stowe tariffs Rate 01 and Rate 06.

6. On or about January 4, 2006, Mr. Grissler contacted Stowe and spoke with both the billing clerk and general manager regarding the electric usage issue at Owls Head. Petition at 1; Response to petition at 1.

7. During these discussions it was revealed that the increase in electric usage at Owls Head during the December 2005 billing period coincided with the use by Mr. Grissler's contractor of temporary electric space heaters during the drywall/spackling/painting phase of construction. Petition at 1; Response to petition at 1.

8. On January 9, 2006, the electric meter for Owls Head was read. It indicated that approximately 2,600 kWh had already been used during the January 2006 billing period. Petition at 1.

3. The December 2005 billing period covered Mr. Grissler's electric use for the period November 15, 2005, through December 19, 2005; the January 2006 billing period covered Mr. Grissler's electric use for the period December 19, 2005, through January 18, 2006.

9. Beginning with the February 2006 billing period, the Owls Head electric service account has been billed under Stowe's Rate 06. *See* Stowe electric service bills for the electric usage at Owls Head Ln Lot 9 for the period January through May 2006.

10. The kWh usage at Owls Head has not exceeded 2,000 kWh during the February 2006, March 2006 or April 2006 billing periods. *See* Stowe electric service bills for the electric usage at Owls Head Ln Lot 9 for the period January through May 2006.

III. DISCUSSION

In this proceeding, Mr. Grissler seeks to avoid having his Owls Head account be billed under Stowe's Residential Demand Rate 06, which provides, in pertinent part, as follows:

This rate is available for existing single-phase electric service at secondary voltage in single family dwellings and apartments and for agricultural production within the service territory of the Stowe Electric Department (Town of Stowe). Energy consumption measured at 2,000 kWh or more during each of two consecutive peak season months⁴ shall be served under this rate.

In the event that a customer doesn't exceed 2,000 kWh for 2 consecutive months during the subsequent 5 peak season months, the customer may elect to take service under any of the other rates normally available for residential service.

The customer may elect to remove at the customers' expense, the equipment, appliances and/or source creating the excessive electric load. If customer elects to do this, they must conform to the following procedure, and upon completing said process, may elect to assume service under any other rates available for residential service immediately.

Procedure: Customer removes load source creating excessive power consumption. Customer provides written notification to the Stowe Electric Department of this event, and requests a site inspection to confirm that this action is likely to reduce load to less than 2,000 kWh/month. Stowe Electric Department Personnel will inspect the site and, upon approval, notify appropriate Department personnel to assign a new rate class.

In this case, the excessive power consumption at Owls Head that triggered transfer of Mr. Grissler's account from Stowe's Rate 01 to Stowe's Rate 06 was occasioned by the use of temporary electric heaters used to facilitate the drywall/spackling/painting phase of construction at Mr. Grissler's residence. Because of Stowe's December 30, 2005, notice to Mr. Grissler, he

4. Under Stowe's tariff, peak season runs from November 1 to March 31.

became aware of the possibility of that rate change prior to expiration of the January 2006 billing period. He promptly contacted Stowe in order to determine what could be done to avoid the rate change.⁵ Focusing upon that portion of the tariff which addresses transfer to Rate 06, Stowe suggested that the meter for Owls Head be read in order to inform Mr. Grissler about how much more electricity could be used during the January 2006 billing period before the 2,000 kWh mark would be reached.⁶ The meter was read on January 9, 2006; however, by that time, the 2,000 kWh mark already had been passed.⁷ Hence, pursuant to the terms of Stowe's tariff, the Owls Head account was transferred to Stowe Rate 06 beginning with the February 2006 billing period.

Transfer of the Owls Head account to Rate 06 appears to have been made properly, in accordance with Stowe's tariff. However, it does not appear that Stowe and Mr. Grissler have explored the question of how a Stowe customer who has been transferred to Rate 06 might proceed to be transferred back to Rate 01. Under Rate 06, two such avenues are available.

First, a customer can assume service under Rate 01 if s/he does not exceed 2,000 kWh for 2 consecutive months during the subsequent 5 peak-season months. In Mr. Grissler's case, this avenue effectively requires payment of monthly demand charges and rates for a period of a year. However, a second avenue for assignment to Rate 01 also is available to Stowe customers.

As an incentive for Stowe customers to remove large-usage devices from service, Rate 06 allows "demand customers to escape the demand rate by permanently removing load."⁸ The tariff establishes a procedure for notice that the load source creating excessive power use has been removed, confirmation that this action is likely to reduce load to less than 2,000 kWh/month, and approval by Stowe for the rate change. The customer then may choose to assume service, immediately, under any rate available for residential service.

In this case, there is no evidence that the parties either considered, or followed, the procedures set forth in Rate 06 for reassignment to Rate 01. Nevertheless, consistent with the

5. Stowe notified Mr. Grissler about the high electric usage at Owls Head by letter dated December 30, 2005, and Mr. Grissler contacted Stowe about this matter on or about January 4, 2006. See Findings 4 and 6, above.

6. Response to petition at 2.

7. Petition at 1.

8. Docket No. 5260, Order of 10/13/89 at 5.

objective of the Rate 06 tariff to encourage lower electric power demand, a high demand load source was promptly removed from the Owls Head location, resulting in reduction of electric usage to less than 2,000 kWh/month. By way of Mr. Grissler's petition, which was filed prior to expiration of the January 2006 billing period, Stowe had notice that the offending load source already had been removed from the Owls Head location. Moreover, it appears that Stowe supported Mr. Grissler's effort to avoid having the Owls Head account transferred to Rate 06, even though it did not advise him about the load-removal option to escape Rate 06.⁹

Under these circumstances, the interests of justice call for treating Mr. Grissler's communication with Stowe and the filing of his petition as constructive compliance with Rate 06's requirements concerning notice and removal of the source of excessive load. In addition, under the circumstances here, the interests of justice call for treating the less-than-2,000 kWh/month electric usage at Owls Head, beginning with the February 2006 billing period, as constructive compliance with the inspection and approval requirements of Rate 06.

Therefore, I conclude that, under the specific circumstances of this case, it is reasonable and appropriate for the Board to direct Stowe to bill the Owls Head account under Rate 01, beginning with service rendered on January 18, 2006 (the first day of the February 2006 billing period).¹⁰

9. In Stowe's response to Mr. Grissler's petition, Ellen Burt, Stowe's general manager, emphasized that Stowe was obligated to abide by Public Service Board tariffs and regulations and that Stowe could not make exceptions from those tariffs and regulations. She also stated "I feel that Stowe Electric has assisted Mr. Grissler as much as possible within the confines of the Public Service Board tariffs and regulations . . . If I thought Stowe Electric had done anything unreasonable, unjust or unfair in this matter I would have petitioned the Board for relief from the tariff for Mr. Grissler." Response to Petition at 2 and 3.

10. Under 30 V.S.A. § 209(a)(4), the Board has "jurisdiction to hear, determine, render judgment and make orders and decrees . . . in all matters respecting . . . [t]he price, toll, rate or rental charged by any company subject to supervision under this chapter, when unreasonable . . ."

I also note that, in this case, although the contractor who was building Mr. Grissler's new residence was the one who actually used the Owls Head electric service account during the December 2005 and January 2006 billing periods, the account had been established by the contractor in Mr. Grissler's name. Petition at 1; Letter of Paul Reed, President of Sundown Corporation, dated January 31, 2006. In response to Mr. Grissler's inquiry about how the Rate 06 issue might have been avoided at the outset, Stowe advised Mr. Grissler that "many contractors place the electric account for the property they are working at in their name during construction and once it is completed and sold to the new owner, the property owner's name goes on the electric account . . . [and] even though an account may be placed on demand under the contractor's name, when the property is sold to the new owner the owner is billed under residential rate 01." Response to Petition at 2. This Stowe practice lends additional support to finding, that, in

IV. CONCLUSION

For the reasons discussed above, I recommend that the Board direct Stowe to bill Mr. Grissler's Owls Head account under Stowe's Rate 01, beginning as of January 18, 2006 (the first day of the February 2006 billing period). I further recommend that Stowe be directed to reimburse Mr. Grissler for any amounts billed and collected by Stowe for the Owls Head account under Rate 06 that exceed amounts calculated under Rate 01. Finally I recommend that any such reimbursement be made to Mr. Grissler as a lump sum payment.

This Proposal for Decision has been served on all parties to this proceeding in accordance with 3 V.S.A. § 811.

Dated at Montpelier, Vermont, this 25th day of October, 2006.

s/Judith M. Kasper

Judith M. Kasper, Esq.

Hearing Officer

this case, it is reasonable and appropriate for Stowe to bill the Owls Head account under Rate 01.

V. BOARD DISCUSSION

On October 13, 2006, Stowe filed comments on the Hearing Officer's proposal for decision. No other party filed comments in this docket following issuance of the proposal for decision.

In this docket, Mr. Grissler requests relief from charges imposed under Stowe's Residential Demand Rate 06 tariff against his Owls Head electric service account. The Hearing Officer has suggested that, in the interests of justice, we should relieve Mr. Grissler from the Rate 06 charges applied to his account by finding that there has been constructive compliance with the procedure articulated in Stowe's Rate 06 tariff that affords a customer the opportunity to change from Rate 06 to Rate 01 upon removal of the offending load source. Stowe has objected to the Hearing Officer's proposed resolution of this docket on the grounds that Mr. Grissler had notice that electric space heating was prohibited at the Owls Head property by virtue of the provisions of the Owl's Head subdivision covenants, as well as the Ability to Serve Letter from Stowe to Mr. Grissler for Owl's Head Lot #9.¹¹ Stowe also expressed concern about the issuance of a Board order that would allow the cost of excessive electric power usage to be subsidized by ratepayers other than the customer who imposed the excessive demand on Stowe's system.¹²

We have considered the concerns raised by the Hearing Officer, Mr. Grissler and Stowe in this docket. We conclude that we need only to look to the language of the Rate 06 tariff itself to resolve this proceeding. For the reasons discussed below, we decline to apply Stowe's tariff in the manner proposed by the Hearing Officer. Rather, we conclude that, under the Rate 06 tariff, Stowe is authorized to apply the demand rate to the Owls Head account for service rendered during the period January 18, 2006, through March 15, 2006, and that, for service rendered thereafter, the Owls Head account should be billed under Rate 01.¹³

Stowe's Rate 06 tariff provides, in pertinent part:

Energy consumption measured at 2,000 kWh or more during each of two

11. Stowe's comments on the Proposal for Decision, at 2.

12. Stowe's comments on the Proposal for Decision, at 2.

13. This conclusion assumes that application of Rate 06 has not been triggered subsequent to March 15, 2006.

consecutive peak season months shall be served under this rate. In the event that a customer doesn't exceed 2,000 kWh for 2 consecutive months during the subsequent 5 peak season months, the customer may elect to take service under any of the other rates normally available for residential service. . . . The Peak Season is November 1 to March 31. The Peak Season rate shall apply to all billings normally rendered from December 1 to April 30.

In this case, electric power usage at the Owls Head property triggered placement of Mr. Grissler's account on Rate 06 as of January 18, 2006. The record in this docket includes copies of bills rendered in February 2006 (covering the period January 18, 2006 to February 14, 2006), March 2006 (covering the period February 14, 2006 to March 15, 2006) and April 2006 (covering the period March 15, 2006 to April 13, 2006). In all three of these peak season periods, Mr. Grissler was billed under Rate 06, and in all three of these billing periods, electric power usage at Owls Head did not exceed 2,000 kWh/month.

The fact that Mr. Grissler's Owls Head account was billed by Stowe under Rate 06 for the period March 15, 2006, to April 13, 2006, indicates that Stowe interprets the Rate 06 tariff to mean that Stowe is authorized to continue to bill the Owls Head account under Rate 06 until electric power usage at the Owls Head property does not exceed 2,000 kWh/month for two consecutive months during the peak season beginning November 1, 2006. We disagree with this interpretation.

Under the plain language of the tariff, a customer who has been placed on Rate 06 may elect to take service under any other residential rate if that customer does not exceed the 2,000 kWh limit for each of two consecutive peak season months out of the five peak season months subsequent to the time that the customer triggered placement on Rate 06. The wording of the Rate 06 tariff does not impose a requirement that a customer wait until the beginning of the subsequent peak season before becoming eligible to qualify for relief from the Rate 06 tariff. The tariff simply refers to subsequent peak season *months* (rather than a subsequent peak season).

Because electric power usage at the Owls Head property did not exceed 2,000 kWh/month for each of two consecutive months subsequent to the time that the account was placed on Rate 06, and because each of those two consecutive months were peak season months, we conclude

that Mr. Grissler was entitled to have his Owls Head account returned to Rate 01 for service rendered as of March 15, 2006.

VI. ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that:

1. The Town of Stowe Electric Department ("Stowe") shall bill Mr. Brian Grissler's electric service account for property located at 252 Owl's Head Lane, in Stowe, Vermont, and identified on Stowe's bills as "Owls Head Ln Lot 9" ("Owls Head"), under Stowe's Residential Rate 06, for the period January 18, 2006, to March 15, 2006.

2. Stowe shall bill Mr. Grissler's Owls Head electric service account under Stowe's Residential Rate 01, beginning with service rendered on March 15, 2006.

3. Beginning with service rendered on March 15, 2006, Stowe shall reimburse Mr. Grissler for any amounts billed and collected by Stowe for the Owls Head account under Stowe's Residential Demand Rate 06 that exceed the amounts calculated under Stowe's Residential Rate 01.

4. Stowe may choose to make the required reimbursement to Mr. Grissler either as a bill credit, or as a lump sum payment, to be made within 30 days of the date of this Order.

Dated at Montpelier, Vermont, this 21st day of November, 2006.

<u>s/James Volz</u>)	
)	PUBLIC SERVICE
)	
<u>s/David C. Coen</u>)	BOARD
)	
)	OF VERMONT
<u>s/John D. Burke</u>)	

OFFICE OF THE CLERK

FILED: November 21, 2006

ATTEST: s/Susan M. Hudson

Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.